

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY BAILEY,

Case No. 2:19-cv-01725-GMN-BNW

Petitioner,

v.

ORDER

BRIAN WILLIAMS, et al.,

Respondents.

This matter is before the court on Petitioner Anthony Bailey's motions to reopen this proceeding (ECF No. 92; 93 ("motions")) following a stay and abeyance allowing him to exhaust claims alleged in his petition for writ of habeas corpus. (*See* ECF No. 90.) Respondents do not oppose reopening this action; however, they object to Bailey's attachment of a new federal habeas petition (ECF No. 92 at 7–57) to his motion. (*Id.*) Respondents further assert that they do not concede any claims raised by this action or waive any defenses and disagree with Bailey's assertion that they previously waived defenses or responses to Bailey's claims during the state court proceedings for purposes of this action. (*Id.*) Bailey did not file reply briefs in support of his motions.

The court will grant Bailey's motions to reopen this action (ECF No. 92; 93). *See United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020). The court will furthermore construe Bailey's filing of a new petition (ECF No. 92 at 7–57) as a motion to amend the petition and will order a briefing schedule before ruling whether Bailey may amend the petition. *See Woods v. Carey*, 525 F.3d 886, 890 (9th Cir. 2008) (holding documents filed *pro se* are to be liberally construed and where a new *pro se* habeas petition is filed before the adjudication of a prior habeas petition, the new petition should be construed as a motion to amend the pending petition); *see also*

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1 Fed. R. Civ. P. 15. The court defers ruling on issues of waiver and defenses until raised in an
2 appropriate motion or on the merits.

3 **IT IS THEREFORE ORDERED:**

4 1. Bailey's motions to reopen this action (ECF Nos. 92; 93) ARE GRANTED.


5 2. As the stay is lifted by this order, the clerk of the court will reopen this action.

6 3. The clerk of the court is directed to file, in the present action, a copy of the petition
7 filed at ECF No. 92 at pages 7–57 and designate it a “motion to amend the petition.”

8 4. Respondents will have 21 days after the entry of this order to file an opposition to the
9 motion to amend the petition (“opposition”).

10 5. Bailey will have 14 days following the filing of Respondents' opposition to file a reply.

11 DATED: December 6, 2022

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14 GLORIA M. NAVARRO
15 UNITED STATES DISTRICT JUDGE
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